Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

ALICE CLISSURAS and
PATRICIA CLISSURAS,

Plaintiffs-Appellants and
Petitioners,

v.

CITY UNIVERSITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF
THE CITY OF NEW YORK,
PROFESSIONAL STAFF CONGRESS/CITY
UNIVERSITY OF NEW YORK,
PSC-CUNY WELFARE FUND:

ALL CAUSALLY RESPONSIBLE INDIVIDUALS
OF AFORESAID FOUR AGENCIES;
ALL POTENTIALLY RESPONSIBLE AGENCIES; and
ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants-Appellees and
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

APPELLANTS' PETITION FOR WRIT OF CERTIORARI AND APPENDIX IN SUPPORT

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Petitioners
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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court for the Southern District err, as to the taking of plaintiffs' pensions, medical coverages, and employment identities, by not determining plaintiffs' Motions for Dismissal of Defendants for failure to answer and defend against plaintiffs' prima facie case Complaints; by granting defendants' Motions to Dismiss fact-laden Complaints, without affirmation of opposing facts and argument of controverting law, without findings of fact and conclusions of law, as to the causes of action, and without a hearing; and by not determining plaintiffs' Motions to Vacate Orders granting dismissal of Complaint as against defendants and to determine plaintiffs' Dismissal Motions, which remain undetermined.

2. Did the Second Circuit err by not determining plaintiffs' Appeals, by affirming the judgment of the District Court as it pertains to the defendants; by not determining appellants' Petitions for panel and en banc rehearing; and by not correcting the errors of the Southern District.

3. Did the Southern District and the Second Circuit err by not ruling on deprivations of Constitutional equal protection of the laws and due process, on conversion of identities from State to City teachers, and on fraud.

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*As of July 8, 2004 Docket

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW. .	i
ALL PARTIES AND THEIR ATTORNEYS .	iii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES.	vi
OPINIONS, ORDERS, and JUDGMENT. .	1
JURISDICTION.	3
NOTIFICATION REQUIRED BY RULE 29.4(b).	4
CONSTITUTIONAL PROVISIONS, STATUTES and REGULATIONS. . . .	4
STATEMENT OF THE CASE: PARTIES. .	8
PENSIONS.	11
MEDICAL COVERAGE.	15
IDENTITY CONVERSION	17
SUMMARY OF ARGUMENT	19
ARGUMENT : FAILURE OF RESPONSE : THE DEFENDANTS.	21
DEFENDANTS' MOTIONS	23
CONCLUSION.	28

TABLE OF AUTHORITIES

Page

CASES

Blouin, plaintiff-appellant v. Spitzer, defendant-appellee, decided February 2, 2004, Docket No. 02-7997. 23

Freude v. Bell Telephone Company of Pennsylvania, 434 F.Supp. 1059 (1977), Justice Stevens, at p.1051 25

Kamruddin v. Desmond, 741 N.Y.S. 2d 559 (2d Dept. 2002). 26

Taggert, 924 F.2d at 46 22

Vives v. City of New York, Southern District, December, 2003. 23

United States v. Evans, 431 U.S. 553, 558 (1977) 25

CONSTITUTIONAL PROVISIONS

U. S. Constitution, Amendments V, VII, XIV 4,5,11

STATUTES

28 U.S.C. §1254(1). 4

28 U.S.C. §1343 5

New York State Education Law. . .7,11,13

New York State Law of Torts . . . 7,13

New York State Retirement and Social Security Laws. 13

Administrative Code of the City of New York, Chapter 20, Title B 9

REGULATIONS	Page
Fed.R.Civ.P.:	
Rule 7(a)	5,22
Rule 7(b)(1)	6
Rule 8(d)	6,22
Rule 10(a)	4,31
Rule 12(h)(1),(3)	6,23
Rule 26(a)(1)	23
Rule 29.4(b)	4
Rule 52(a), 55(a)	7
Rule 60(b)(3),(4)	7
N.Y.C.P.L.R. 3211(b)	7,22

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

ALICE CLISSURAS, Docket No. 03-7531, v.
CITY UNIVERSITY OF NEW YORK, et al.

PATRICIA CLISSURAS, Docket No. 03-7532, v.
CITY UNIVERSITY OF NEW YORK, et al.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE and ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, Alice Clissuras (AC) and Patricia Clissuras (PC), respectfully petition for a writ of certiorari to review:

OPINIONS, ORDERS, and JUDGMENTS

1. As to the Second Circuit Court of Appeals:

a. JUDGMENT filed February 3, 2004, AFFIRMING Judgment of the District Court, by unsigned SUMMARY ORDER, without opinion, as it pertains to dismissal of Complaint as against Teachers' Retirement System of the City of New York (Retirement System), Professional Staff

Congress/City University of New York (Union); and PSC-CUNY Welfare Fund (Welfare Fund); (Appendix to this Petition, A.1 and A.3-8)

b. OPINION filed February 3, 2004, AFFIRMING judgment of the District Court, as it pertains to dismissal of Complaint as against City University of New York (CUNY), by de novo review of immunity and by published unsigned PER CURIAM Opinion; (A.1, 9-19)

c. ORDER filed May 14, 2004, DENYING Petition for panel and en banc rehearings by unsigned Order endorsed on Motion dated February 20, 2004, and by Order in which names of appellants and descriptions of unnamed defendants are misspelled; (A.2, 20-21)

d. Judgment MANDATE ISSUED. CLOSED. June 14, 2004, unsigned, without opinion or order and a certified copy of the judgment, and without referencing order and action to be taken by District Court on remand. (A.2, 22-23)

2. As to the United States District Court for the Southern District, to review:

a. ORDER dated October 31, 2002, filed November 4, 2002, dismissing

defendant CUNY from the lawsuit, by immunity, without motion and hearing;(A.24-26)

b. OPINION AND ORDER dated March 27, 2003, GRANTING MOtion to dismiss complaint and closing the cases as to the remaining defendants, without a hearing (A.27-44), with certification of entry of Opinion (88259) and Order dated March 31, 2003 (should be March 27, 2003), on April 4, 2003 (A.45-46)

c. MEMORANDUM OPINION AND ORDER, dated May 15, 2003, denying Motion for reconsideration as untimely by converting plaintiffs' timely Motions to Vacate to untimely reconsideration Motions, without a hearing, entered May 22, 2003. (A.47-52)

JURISDICTION

The SUMMARY ORDER and the de novo OPINION of the Court of Appeals for the Second Circuit, whose Judgment is herein sought to be reviewed, are reprinted in the Appendix to this Petition (A.1, 3-8, and 9-19)

Timely Petitions for rehearing by panel and en banc were denied May 14, 2004 (A.2 and 20-23)

This Court's jurisdiction is

invoked pursuant to 28 U.S.C. §1254(1); Fed.R.Civ.P.10(a); and as of right, U.S.Constitution, Amendments V and XIV for due process and equal protection of the laws and Amendment VII for right to trial.

NOTIFICATION REQUIRED BY RULE 29.4(b)

In plaintiff-appellants' Petition for Rehearing of Appeal, dated February 20, 2004, appellants challenged the Constitutionality of Fed.R.Civ.P. 12(h)(3), as overbroad, vague, and subject to misapplication and errors. The Court of Appeals denied the entire Petition with one sentence which did not include any particulars and thus there was no response to the challenge.

Appellants have not as yet made the notifications required by Rule 29.4(b)

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The United States Constitution, Amendment V, provides in pertinent part:

> ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . ."

Amendment VII of the Constitution provides:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law."

Amendment XIV of the Constitution, §1, provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. 1343 provides in pertinent part:

> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

Rule 7(a) of the Federal Rules

of Civil Procedure, provides in pertinent part:

> "Pleadings. There shall be a complaint and an answer . . . ."

Rule 7(b)(1) provides:

> "An application to the court, for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. . . ."

Rule 8(d) provides:

> "Averments in a pleading to which a responsive pleading is required other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

Rule 12(h)(1) provides:

> "A defense of lack of jurisdiction over the person . . . is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."

Rule 12(h)(3) provides:

> "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court, shall dismiss the action."

Rule 60 (b)(3),(4) provides:

"On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; . . . (4) the judgment is void. . . ."

Rule 52 (a) provides:

"In all actions. . .without a jury. . .the court shall find the facts specially and state its conclusions of law thereon. . . ."

Rule 55 (a) provides:

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, as provided by these Rules and the fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default."

New York C.P.L.R., §3211(b), motion to dismiss defense, provides:

"A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit."

New York State Education Law includes in relevant part: "pensions, Career Retirement Plan, Tier I. . . ."

New York State Law of Torts includes in relevant part: "fraud, misrepresentation, concealment and

nondisclosure, prima facie tort, breach of contract, acting in concert. . . ."

STATEMENT OF THE CASE

From the outset of plaintiffs' employment and to the present, plaintiffs' employer and each and every agency connected to plaintiffs' employer, have been improperly depriving plaintiffs of their property and of their rights to earnings, benefits, and entitlements, nonstop.

PARTIES:

a. Plaintiff Alice Clissuras (AC), pro se, and Plaintiff Patricia Clissuras (PC), pro se, each brought an action by service of Summons and Complaint on October 11, 2002, against City University of New York (CUNY), Teachers' Retirement System of the City of New York (Retirement System), Professional Staff Congress/City University of New York (Union), and PSC-CUNY Welfare Fund (Welfare Fund), for deprivation of earnings, benefits, and entitlements.

b. Defendant CUNY is a corporation duly established and existing by virtue of the New York State Education Law and governs and administers New York

City Technical College, at which CUNY unit plaintiffs were employed.

Defendant CUNY improperly placed plaintiffs in the New York City Board of Education Teachers' System, in a City Teachers' Retirement System, and in a City medical coverage system, from the outset, by which actions, plaintiffs were and continue to be deprived of their New York State Pension, State Medical Insurance, and State employment records, and in the instant case are opposed by the Office of the Attorney General of the State of New York.

c. Defendant Retirement System is under the general management and control of the Teachers' Retirement Board of the City of New York and duly established and existing by virtue of Title B of Chapter 20 of the Administrative Code of the City of New York, providing pension benefits to Board of Education, City Public School teachers.

The Retirement System does not provide pensions for State professors. Plaintiffs are on City employment records, receive pensions from the City Comptroller, and are opposed in the instant case by the Corporation Counsel of

the City of New York, improperly.

d. Defendant Union is the collective bargaining representative of professional members of the instructional staff employed by the CUNY/Board of Trustees. Plaintiffs have been members as active employees and currently as retirees, during their period of service and retirement.

Defendant Union collectively with defendants CUNY and Retirement System use CUNY forms to calculate plaintiffs' pensions, which forms conceal the fact that the formulas for calculating the pensions are City pension calculations and not State.

e. Defendant Welfare Fund is a benefit program designed to supplement members' medical coverage and to provide important financial protection in the event of a serious illness. The Welfare Fund is financed entirely by employer contributions based on collective bargaining agreements between CUNY and the Union.

The Welfare Fund, the Union, and CUNY have collectively taken plaintiffs' comprehensive Blue Cross and

Blue Shield policies, with prescription coverage and converted the policies into City/Welfare Fund Supplemental co-insurer coverages. The City administers the medical care and the Welfare Fund administers the prescription coverage, including cards with which the computer cannot be accessed.

f. The potentially responsible unnamed defendants, including individuals and agencies, are potentially accountable until discovery proceedings make the names certain.

PENSIONS

a. Plaintiff AC retired September 1, 1982, pursuant to New York State Education Law, Career Retirement Plan, Tier I member, with 34 continuous years of pension service credit, at the College, and with earned rights to a 30-year allowance for completion of 30 years.

Instead, defendant Retirement System, in violation of Amendment XIV of the United States Constitution for equal protection of the laws and in violation of New York State Education and Tort Laws, deceptively calculated

plaintiff AC's pension pursuant to Municipal Law.

Thus, under the color of State Law, plaintiff AC's pension was reduced by elimination of the first five years of service, as "outside service" which resulted in a loss of $5,000 annually for the five eliminated years, and by elimination of the 30-year allowance which disappeared with the fraudulent conversion from 34 to 29 years, resulting in a second loss of $5,000 annually, amounting to a loss of over $200,000 for over 20 years, to date.

(Please see plaintiff AC's prima facie pension case and supporting evidence: October 11, 2002, AC, Complaint, pp. 7-15, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss the Defendants, pp. 1-14.) (02cv8130)

b. Plaintiff PC retired January 30, 1986, with a pension service credit of 23 years, which included 17 years of employment at the College, a unit of CUNY, from 1969 to 1986; 3 purchased years (1966-1968) of New York state-private-academic service; and 3 years of retirement service credit pursuant to Chapter 665 of

the New York State Laws of 1984, for early retirement.

Instead, defendant Retirement System in violation of Amendment XIV of the United States Constitution, for equal protection of the laws, and in violation of New York State Education and Tort Laws, deceptively calculated plaintiff PC's pension pursuant to Municipal Law.

As a New York State Education Law Career Pension Plan, Tier I, member, with 23 years of pension service credit, plaintiff PC was entitled to a base pension calculated at 2.5 per cent per year or 57.5 per cent for 23 years. The failure to apply State Law resulted in the loss of $12,000 annually and over $200,000 for 18 years, to date.

To calculate the lower Municipal pension: (1) plaintiff PC's first year was reduced to a partial year by not placing plaintiff PC in a pension membership and by not deducting Social Security payments until September 1, 1969, instead of February 1, 1969, as required by New York State Retirement and Social Security Laws, which reduced plaintiff PC's years to 22.45;

(2) by falsely holding that plaintiff PC did not pay the cost of purchase, the three years of prior state service were not included in the pension, which reduced plaintiff's years to 19.45; and (3) by falsely stating PC's retirement date, the three early retirement years were not included, which reduced plaintiff PC's years to 16.45.

Defendants CUNY, Retirement System, and Union, in communicating the calculation of plaintiff PC's pension committed the following errors: (1) all three defendants improperly used "Plan B" which does not apply to plaintiff PC who is not a Board of Education city retiree; (2) all three defendants used twenty or more years of service to calculate the pension, which use mandated a calculation starting with half-pay for twenty years and which defendants failed to do; and (3) not one defendant asserted an exception for any of plaintiff PC's service which would exclude use of service towards the 20-year eligibility.

All of PC's 23 years qualify for New York State service pension at 57.5 per cent.

The use by the defendants of 20 or more years of "creditable service," without the assertion of an exclusionary exception in the law, and the calculation of PC's 23 creditable state years as a Plan B city pension constitute prima-facie evidence of failure to apply State Law equally to plaintiff, deprivation of due process, obstruction of justice, fraud, and identity theft.

(Please see plaintiff's prima facie pension case and supporting evidence: October 11, 2002, PC, Complaint, pp.7-17, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss the Defendants, pp.23-35) (02cv8138)

MEDICAL COVERAGE

Plaintiffs joined the health programs when the plans became available to instructional staff, and plaintiffs have not changed health care provider and have not waived any contracted coverages or benefits, to date, making the insurer the primary provider.

As retirees and Medicare participants, New York State provides the identical coverage and benefits that plaintiffs had as active employees,

which include health insurance, with hospital service, all optional riders, including prescription drugs, and all additional Welfare Fund programs. Welfare Fund programs do not substitute in any way, for the contracted insurance policies between the health care provider and plaintiffs. The terms and conditions of the policies govern and contractually prevail.

The defendants CUNY, Welfare Fund, and Union deceptively and unlawfully placed plaintiffs in computer as New York City School retirees and under the color of State law converted plaintiffs' medical coverage from a Comprehensive State Benefits Plan to a non-equivalent sparse City Plan/Senior-Care Welfare Fund Plan with non-equivalent health insurance and Prescription Drugs coverages, all in violation of plaintiffs' contracted health insurance policies, riders, and the law.

Plaintiffs were not provided with a policy and currently are provided with cards that are not computer ready.

Plaintiffs do not know what their medical coverage is at any given time, since the coverage is discovered

when an event requires contact with a medical agency. It is then that plaintiffs discover that they cannot access their true coverage.

Thus, defendants Welfare Fund and Union use and change plaintiffs' medical coverage and Union membership in toto or in part, at will, depriving plaintiffs of their entitlements, with support from defendant CUNY. (Please see, for AC, October 11, 2002 Complaint, pp.15-20, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss, pp.15-22.) (02cv8130) and (Please see, for PC, October 11, 2002 Complaint, pp.17-23, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss, pp.36-38.) (02cv8138)

IDENTITY CONVERSION

The core of plaintiffs' identity theft claim is found in the taking of plaintiffs' identity as CUNY professors with earnings, one Social Security No., apiece, pension benefits, and ownership rights, and in the altering of each plaintiff's identity by defendants CUNY, Retirement System, Union, and Welfare Fund, collectively, at will, in part or

in whole, to unlawfully and deceptively diminish and deprive plaintiffs of their earnings, property, and rights.

Each defendant supports the improper acts of the others and each one acts in the taking, at relevant times, as each appears over the years, according to agency functions.

The taking of plaintiffs' identities began at the outset of each plaintiff's employment. It has been accomplished, in the main, by said defendants, by the establishment of two or more plaintiff identities, by concealment of information, records, contracts, policies, and plans, and by the use and dissemination of false information.

The taking, by defendants CUNY, Retirement System, Union, and Welfare Fund, of plaintiffs' rights to property, to privacy, and to personal and professional identities, denotes failure of equal application of laws, obstruction of justice, failure of due process, fraud, breach of contract, and breach of fiducial responsibility.

SUMMARY OF ARGUMENT

This is a case that is replete with errors and violations of the rights of Petitioners AC and PC.

By their Complaints and Motions to Dismiss the defendants, CUNY, Retirement System, Union, and Welfare Fund, the petitioners focus on three core causes of action: the taking of petitioners' pensions, the taking of petitioners' medical plans, and the taking of petitioners' identities.

Petitioners presented a complete prima facie case with referenced evidence and documentary evidence in support.

Defendants have not responded to any of three causes and have not controverted any one of the takings.

The District Court did not determine plaintiffs' Motions to Dismiss defendants for failure to respond and defend. The District Court did not reach any findings of fact and conclusions of law and did not rule on equal protection of the laws, on deprivation of due process, on identity conversions, and on fraud.

The Circuit Court did not

determine petitioners' appeals, did not reach any findings of fact and conclusions of law, and did not rule on equal protection, deprivation of due process, identity conversions, and fraud.

Petitioners' requests for rehearing by panel and en banc were denied by one sentence, for each.

The failure of the respondents to answer and defend against a prima facie case and evidence, denotes that the respondents admit all of the causes of action, and are subject to judgment by default and dismissal for failure to defend.

By not determining petitioners' Motions and Appeals, and by overlooking and not addressing equal protection, deprivation of due process, identity conversion, and fraud, the Courts made manifest and plain errors, which deprived petitioners of their Constitutional and legal rights.

There is no legal basis for allowing the respondents to continue in this case or to have allowed respondents to survive a Motion to Dismiss for failure to respond and defend.

ARGUMENT

FAILURE OF RESPONSE: THE DEFENDANTS

The defendants, CUNY, Retirement System, Union, and Welfare Fund, have not made an appearance in this action, from service of Complaint to present. The defendants have not verified any of their attorneys' responses and have not submitted or proffered any plaintiff records. The concealment of the records continues to conceal the issues and to interfere with due process and justice, for over 20 years.

The attorneys for the four defendants have not, from service of Complaint to present, denied or controverted the issue that plaintiffs are receiving Municipal pensions in place of State pensions, for over 20 years with a loss of over $10,000 annually for each plaintiff.

Defendants' attorneys have not denied or controverted that plaintiffs' medical coverage is a Municipal/Welfare Fund Coverage in place of the State full coverage.

Defendants have not denied or controverted that plaintiffs' employment records improperly show that plaintiffs

are City, Board of Education teachers, or in the alternative, on some records, plaintiffs do not appear to have been employed as teachers.

Defendants' attorneys did not serve answers, with the exception of the Union and Welfare Fund, who served defective Answers, and thus are considered not to have answered.

Defendants' attorneys did not serve affirmations of opposing facts, did not argue against the three core issues, and did not produce a shred of controverting evidence in support of dismissal of the Complaint.

The failure of the defendants who determined plaintiffs' pensions, medical coverages, and records, to defend against plaintiffs' facts and evidence is cause for immediate dismissal of defendants. [Fed.R.Civ.P. 7(a),8(d), and New York C.P.L.R.3211(b)]

With service of the Complaint, plaintiffs' prima facie cases shifted the burden of production of proof to defendants, who in this case made no response. (See Taggert, 924 F.2d at 46)

Defendants' concealment of all records is a fraudulent concealment of

the causes of action. The records should have been made available to plaintiffs according to Fed.R.Civ.P.26(a)(1), which requires a party, without a discovery request, to provide all documents that may be used for a party's claims or defenses, as part of the initial disclosures, at the very least.

DEFENDANTS' MOTIONS

Instead of a motion, one week after service of the Complaints, defendant CUNY made an ex parte suggestion by letter to the District Court stating that the Court lacked subject matter jurisdiction over plaintiffs' causes of action against CUNY because CUNY was entitled to Eleventh Amendment immunity, pursuant to Fed.R.Civ.P.12(h)(3). CUNY asserted that it would not use a motion for the immunity claim.

Absolute immunity is a rare entitlement. A government official acting in an official capacity is shielded by qualified immunity unless the official violated a Constitutional right. Vives v. City of New York, Southern District, December, 2003; see also Blouin,plaintiff-appellant, v. Spitzer, defendant-appellee, decided February 2, 2004, Doc.No.02-7997.

In the instant case, plaintiffs' Fifth and Fourteenth Constitutional equal protection and due process rights were violated by CUNY.

The District Court granted immunity for CUNY without a motion and without a hearing. In so doing, the District Court dismissed plaintiffs' disputed fact-laden Complaints, two weeks after service of the Complaints, removed an indispensable party, and overlooked Constitutional violations and deceits. CUNY did not respond to any paper or process in the District Court.

The moving defendants used a host of defenses which were unresponsive and unrelated to the three core causes of action. The defenses were fact defenses or affirmative defenses which did not reach the merits of the case, which were not dispositive, and for which the defendants bear the burden of proof at trial.

The District Court argued about six of the defenses in its March 27, 2003 Opinion and Order dismissing the Complaint against the remaining defendants: Retirement System, Union, and Welfare Fund.

By way of illustration, the District Court in its Opinion and Order held that "Because plaintiffs cannot evade the Statute of Limitations by alleging a continuing violation, their section 1983 claims against TRS are dismissed." (A.39)

The District Court relied on United States v. Evans, 431 U.S. 553, 558 (1977) as support for dismissing plaintiffs' claims against the Retirement System. However, in Freude v. Bell Telephone Company of Pennsylvania, 434 F.Supp. 1059 (1977), Justice Stevens, at p.1051, clearly states the holding of Evans and its application, as follows:

> ". . . (I)t is plain that the basic holding of Evans is that a current nondiscriminatory policy will not revive a time-barred act of discrimination even though such policy gives present effect to the past act of discrimination." (Emphasis added.)

Thus, Evans does not apply to plaintiffs' continuing violation claims for purposes of dismissal. There is no current policy which is to be used to revive a time-barred act. Plaintiffs' pensions were calculated as City pensions in 1982 and

they continue to be City pensions, at present.

Plaintiffs are receiving a City teacher pention amount. The most qualified agency to have information to defeat plaintiffs' claims would be the Retirement System, which System conceals all records. It will not even state the amount of a City pension. The concealment of all records is a matter of fraud.

Two grounds exist for equitably estopping a defendant from invoking the Statute of Limitations: (1) fraudulent concealment of the existence of a cause of action, and (2) inducement of delay in suing on a known cause of action. Kamruddin v. Desmond, 741 N.Y.S.2d 559 (2d Dept. 2002). The defendants' "purposeful concealment" of medical records was determinative, said the court, because, "no one may take advantage of his or her own wrongdoing."

Each defendant is concealing records. Each defendant is violating equal protection and due process rights. Each defendant has not responded to and defended against plaintiffs' prima facie case; each defendant has argued unrelated defenses; and each defendant has not argued dispositive defenses.

The disputed facts of the Complaint cannot be dismissed on motion. Fraud cannot be dismissed on motion.

The District Court did not determine plaintiffs' Motions to Dismiss the Defendants for failure to respond and defend. The District Court did not determine plaintiffs' Motions to Vacate the District Court's Order granting immunity to City University and the Order Dismissing the Complaint against the "remaining" defendants.

The District Court acted outside of the Court's authority by dismissing the entire Complaint, without a hearing, without exchange of evidence, without discovery, without issue conference, and without a trial. The Court is not the trier of facts. If even one fact remains standing, it must be tried. Here, all the facts are left standing.

The Circuit Court did not determine plaintiffs' Appeal. The Court overlooked the facts and issues of plaintiffs' cases and devoted attention to a de novo review and determination of the immunity for CUNY. The Circuit Court did not cure any of the errors made by the District Court in granting

immunity for CUNY. Affirming the immunity is a problem since it is a cover for Constitutional violations. The District Court dismissed the fact-based Complaint via immunity and the Circuit Court, by affirming the judgment of the District Court is also dismissing a fact-based Complaint. As to the Court's comments regarding money judgments and the State, plaintiffs' are seeking solely compensatory damages which does not present a problem for the State or immunity since the money is being disbursed as a matter of course.

CONCLUSION

When the defendants argue affirmative defenses instead of meritorious defenses, such as stating the law by which the pensions were determined or stating the terms of the contract by which medical coverage was determined, that means that they have no meritorious defense and that the causes of action are admitted.

By an earlier case, in 1985, District Court for the Eastern District, did not rule on equal protection, due process, identity conversion, and fraud.

That Court dismissed the entire Complaint for a time bar violation on a civil rights claim, which violation was challenged and required proof to reach the merits. However, there was no ruling on plaintiff's challenge.

That earlier dismissal for a challenged affirmative defense allowed the defendants to continue taking plaintiffs' benefits and earnings, to date. The District Court's dismissal of the Complaint in 2002 has allowed the defendants to continue taking plaintiffs' benefits, to date. The dismissal then and now does not provide any basis for allowing Constitutional violations and fraud to continue, nonstop.

"No one may take advantage of his or her own wrongdoing;" and there is no law which may be used as a shield against violations of law.

To dismiss the Complaint at the pleading stage, the law must be pure and unchallengeable. Plaintiffs request this Honorable Court to grant to plaintiffs judgment by default as against the defendants for failure to answer and defend. The law is clear, and petitioners' complete prima facie case warrants default judgment. Due to the

purity of the law, any judge may make such determination.

Regardless of their defense, the respondents must respond to the petitioners' case first. Here, the failure to respond turned into any defense except a responsive one.

This case should have ended, on petitioners' part, with the first failure to respond to the issues. The Courts made manifest and plain errors which deprived petitioners of their Constitutional due process and equal protection rights.

The Orders of the Courts are void due to the absence of decisions on petitioners' Motions and Appeals. It does not appear that the determinations are in the form of Orders, signed by the Court, and directing the Clerk to enter.

The June 14, 2004 Judgment Mandate does not refer to a specific order and there are no directions as to action to be taken by the District Court on remand.

No Court has considered the merits of the case. No Court has dismissed on the merits. The only dismissals have been dismissals of the

Complaints on affirmative defenses, without any bases in law.

WHEREFORE, petitioners respectfully request that a writ of certiorari be granted, pursuant to, inter alia, Fed.R.Civ.P.10(a).

Respectfully submitted,

ALICE CLISSURAS, pro se
Lead Petitioner

PATRICIA CLISSURAS, pro se
Petitioner

215 Adams Street
Brooklyn, NY 11201
(718)875-6171

(2)
Supreme Court, U.S.
FILED
04 361 AUG 12 2004
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

ALICE CLISSURAS and
PATRICIA CLISSURAS,

Plaintiffs-Appellants and
Petitioners,

v.

CITY UNIVERSITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF
THE CITY OF NEW YORK,
PROFESSIONAL STAFF CONGRESS/CITY
UNIVERSITY OF NEW YORK,
PSC-CUNY WELFARE FUND:

ALL CAUSALLY RESPONSIBLE INDIVIDUALS
OF AFORESAID FOUR AGENCIES;
ALL POTENTIALLY RESPONSIBLE AGENCIES; and
ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants-Appellees and
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

APPENDIX IN SUPPORT OF APPELLANTS' PETITION FOR WRIT OF CERTIORARI

ALICE CLISSURAS, pro se
Lead Petitioner
Patricia Clissuras, pro se
Plaintiffs-Appellants and
Petitioners
215 Adams Street
Brooklyn, NY 11201
(718)875-6171

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

- - - - - - - - - - - - - - - - - -

CLISSURAS v. CUNY, et al.

- - - - - - - - - - - - - - - - - -

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

LIST OF DOCUMENTS

	Page
COURT OF APPEALS, DOCKET, 7/26/04 .	1
USCA SUMMARY ORDER, 2/3/04.	3
USCA DE NOVO JUDGMENT, 2/3/04 . . .	9
USCA JUDGMENT, FILED, 2/3/04. . . .	18
USCA ORDER, Panel, en banc, denied 5/14/04.	20
USCA MANDATE ISSUED, 6/14/04. . . .	22
USDC ORDER GRANTING IMMUNITY 10/31/02.	24
USDC OPINION AND ORDER, DISMISSING, 3/27/03	27
USDC JUDGMENT, 4/4/03	45
USDC JUDGMENT, 4/4/03	46
USDC MEMORANDUM AND OPINION, 5/15/03	47

COURT OF APPEALS DOCKET:

1/9/2004	Appellent Alice Clissuras in 03-7531 motion for additional time for oral argument FILED (w/pfs).(2516706-1)
1/13/2004	Order FILED DENYING motion for oral argument by endorsed on motion dated 1/9/2004
1/14/2004	Notice to counsel in re: Order dated 1/13/2004
1/27/2004	Case heard before KEARSE, CALABRESI, KATZMANN, C.JJ CD DATE: 1/27/2004
1/29/2004	Affirmation from APPELLANT Alice Clissuras received.
2/3/2004	Letter dated 2/3/04 from appellee's counsel regarding changes to the summary order received.
2/3/2004	Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion filed. (GC)
2/3/2004	Judgment of the district court is by published unsigned PER CURIAM opinion filed.
2/3/2004	Judgment filed.
2/3/2004	Notice to counsel in re: OPINION and SUMMARY ORDER filed 2/3/2004
2/9/2004	Letter received from Alice Clissuras requesting tape of oral argument Fee Paid Forward to Calendar Receipt #171561
2/18/2004	Note The OPINION PRICE is $1.40

2/20/2004	Appellants Alice Clissuras and Patricia Clissuras Petition for rehearing / rehearing en banc, filed with proof of service.
3/16/2004	Notice to counsel re: Motion Order filed on 3/10/04.
5/14/2004	Order FILED DENYING motion petition for rehearing and for rehearing en banc by Appellants Patricia Clissuras and Alice Clissuras, endorsed, on motion dated 2/20/04 (AH)
5/19/2004	Notice to counsel re: Order filed on 05-14-04.
6/14/2004	Judgment MANDATE ISSUED CLOSED
6/14/2004	Notice to counsel re: Mandate Issued.
6/14/2004	Acco received in records room.

(Last entry as of 7/26/04)

(Please note: The above entries are relevant to the Orders for review and were taken out of the context of the July 26, 2004 docket.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

PRESENT: HON. AMALYA L. KEARSE,
HON. GUIDO CALABRESI
HON. ROBERT A. KATZMANN

Circuit Judges.

ALICE CLISSURAS and PATRICIA CLISSURAS,

Plaintiffs-Appellants,

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CUNY, PSC-CUNY WELFARE FUND,

Defendants-Appellees,

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID

Nos. 03-7531(L)
03-7532(CON)
(Filed Feb 3, 2004)

POTENTIALLY RESPONSIBLE AGENCIES,

Defendants.

For Plaintiffs-Appellants:

ALICE CLISSURAS, pro se, Brooklyn, NY
Patricia Clissuras, pro se, Brooklyn, NY, submitted a brief.

For Defendants-Appellees:

OREN ZEVE, Deputy Solicitor General, for Eliot Spitzer, Attorney General for the State of New York (Michael S. Belohlavek and Jean Lin, Assistant Solicitors General, on the brief), for City University of New York;

BARRY I. LEVY, Shapiro. Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York, NY, for Professional Staff Congress-CUNY

NEIL D. LIPTON. Spivak, Lipton, Watanabe, Spivak & Moss, LLP, New York, NY, for PSC-CUNY Welfare Fund.

NORMAN CORENTHAL, Corporation Counsel of the City of New York, New York, NY (Michael A. Cardozo and Kristin M. Helmers, on the brief), for the Teachers' Retirement System of the City of New York.

Appeal from the United States District Court for the Southern District of New York (Scheindlin, J.)

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

In October 2002, plaintiffs-appellants Alice Clissuras and Patricia Clissuras filed separate pro se actions, in the United States District Court for the Southern District of New York against the City University of New York ("CUNY"), the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress-CUNY ("the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Their virtually identical complaints alleged numerous constitutional violations, ostensibly pursuant to 42 U.S.C.§1983 and §1985, and a variety of state law claims. The gravamen of the plaintiffs' action is that, following the respective retirements of Alice Clissuras in 1982 and Patricia Clissuras in 1986 from the faculty of New York City College of Technology, a CUNY senior college, they were denied certain pension and health benefits because of improper calculations and misclassifications by the defendants.

The district court (Scheindlin,J.) dismissed the claims against defendant CUNY at the outset of the litigation on the ground that CUNY was an "arm of the state" and consequently entitled to Eleventh Amendment immunity. We take up the issue of sovereign immunity in a separate per curiam opinion. The court below also dismissed the actions against the remaining named defendants pursuant to Fed.R.Civ.P.12(b)(6) and enjoined plaintiffs from instituting any future federal litigation against CUNY and these defendants without seeking leave of the court. In this order, we affirm the dismissal-pertinent to TRS, the Union, and the Fund-and the injunction.

Plaintiffs' claims of wrongdoing stem from events the latest of which occurred at least a decade before they filed their present suit, in October 2002. The statute of limitations for causes of action brought pursuant to §§1983 and 1985 in New York is three years, see Jaghory v. N.Y. State Dep't of Educ., 131F. 3d 326,331(2d Cir.1997), and a claim accrues "when the plaintiff knows or has reason to know of the injury which is the basis of (her) action. "Pearl v. City of Long Beach, 296 F.3d 76,80(2d Cir.2002) (internal quotation marks omitted). The record reflects that both plaintiffs had reason to know of their alleged injuries more than ten years ago. And, on the facts of their cases, the plaintiffs cannot point to any continuing violation that would preserve their claim. See Florida v. Long, 487 U.S. 223,239(1988) ("It is not correct to consider payments of benefits based on a retirement that has already occurred as a sort of continuing violation."). Because plaintiffs' constitutional claims are time-barred, they were properly dismissed.

In the absence of any viable federal claims,[1] the district court was well within its discretion in declining to

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[1]In their cavalcade of claims, plaintiffs make creative arguments regarding obstruction of justice and theft of identity. These claims are either time-barred or do not constitute private federal causes of action, or both. The only other potentially colorable federal claim asserted in plaintiffs' complaints is a violation of the Employment Retirement Income Security Act

(Continued on the following page.)

exercise supplemental jurisdiction over plaintiffs' state law causes of action, which is dismissed, of course, without prejudice. See 28U.S.C.§1367(c)(3) (2000); Ametex Fabrics, Inc. v. Just In Materials, Inc.,104F.3d 101.105(2d Cir. 1998). And having reviewed the history of this case, we find no abuse in the lower court's decision enjoining plaintiffs from filing federal lawsuit against these defendants without obtaining the court's permission. See Covanta Onondaga Ltg. P'ship v. Onondaga County Res. Recovery Agency, 318 F.3d 392,398(2d Cir.2003)(noting that district courts have the power to issue injunctions to prevent vexatious litigation). Moreover, the court acted within the range of permissible discretion in denying plaintiffs' motion for reconsideration, and we find this to be so even if we construe the filing as a motion for relief from judgment under Fed R.Civ.P.60(b). See Eisemann v.Greene, 204 F.3d 393,395n.2(2d Cir.2000)(per

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Employee Retirement Income Security Act ("ERISA"), see 29U.S.C.§ 1132(a)(2000). The statute of limitations for ERISA breach of fiduciary duty claims provides for a bar on any action brought more than "three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation" or six years after discovery in the case of fraud or concealment 29U.S.C.§ 1113(2)(2000); see Caputo v.Pfizer,Inc.,267 F.3d 181(2d Cir. 2001). Here, plaintiffs had actual knowledge of the alleged violation more than six years before they instituted their suit.

curiam)("To be entitled to reargument, a party must demonstrate that the Court overlooked controlling decisions or factual matters that were put before it on the the underlying motion.")(internal quotation marks omitted). Finally plaintiff Alice Clissuras's production and recusal motions are denied.

We have considered all of plaintiffs' claims with respect to defendants TRS, the Union, and the Fund and find them meritless. We therefore AFFIRM the judgment of the district court as it pertains to these defendants.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /S/
Richard Alcantara, Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term,2003

(Argued:January 27,2004)

(Decided:February 3, 2004)

Docket Nos.03-7531;03-7532

ALICE CLISSURAS and PATRICIA CLISSURAS

Plaintiffs-Appellants,

- v.-

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND,

Defendants-Appellees,

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORE FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants

Before:KEARSE, CALABRESI,and KATZMANN, Circuit Judges.

Appeal from a district court's determination that a senior college of the City University of New York is an "arm of the state" and therefore immune from suit under the Eleventh Amendment of the U.S. Constitution. AFFIRMED.

ALICE CLISSURAS,pro se, Brooklyn,NY (Patricia Clissuras, pro se, Brooklyn,NY, on submission);

OREN ZEVE, Deputy Solicitor General, for Eliot Spitzer, Attorney General for the State of New York(Michael S. Belohlavek and Jean Lin, Assistant Solicitors General, on the brief), for Defendant-Appellee City University of New York;

BARRY I. LEVY,Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP,New York,NY, for Defendant-Appellee Professional Staff Congress-CUNY;

NEIL D. LIPTON, Spivak,Lipton,Watanabe, Spivak,& Moss, LLP,New York,NY,for Defendant-Appellee PSC-CUNY Welfare Fund.

NORMAN CORENTHAL, Corporation Counsel of the City of New York, New York,NY(Michael A. Cardozo and Kristin M.Helmers, on the brief),for Defendant-Appellee Teachers' Retirement System of the City of New York.

PER CURIAM:

In October 2002, plaintiffs-appellants Alice Clissuras and Patricia Clissuras filed separate pro se actions, in United States District Court for the Southern District of New York, against the City University of New York ("CUNY"), the Teachers' Retirement System of the City of New York(TRS), Professional Staff Congress-("The Union"), PSC-CUNY Welfare-Fund("the Fund"), and various unnamed and potentially responsible defendants. Their virtually identical complaints alleged numerous violations ostensibly pursuant to 42U.S.C.§§1983 and 1985, and a variety of state law claims. The gravamen of the plaintiffs' action is that, following their respective retirements from the faculty

of CUNY's New York City College of Technology, they were denied certain pension and health benefits because of improper calculations and misclassifications by the defendants.

The district court (Scheindlin, J.) dismissed the claims against defendant CUNY at the outset of the litigation on the ground that it is "an arm of the state" and consequently entitled to Eleventh Amendment immunity. 1 U.S.Const. amend.XI. We agree with the district court that New York City College of Technology, plaintiffs' former employer and the relevant entity for the purposes of immunity analysis, is a "senior college" of the City University of New York. 2 See N.Y.Educ.Law §6202(5)

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1 The court below also dismissed the actions against the remaining named defendants pursuant to Fed.R.Civ.P.12 (b)(6), and enjoined the plaintiffs from instituting any future federal litigation against CUNY and these defendants without seeking leave of the court. We affirm this dismissal-pertinent to TRS, the Union, and the Fund-and the injunction in a separate order.

2 Under New York Law, CUNY is a separate corporate body. See N.Y.Educ.Law §6203 (McKinney 2001). CUNY is composed of "each senior college and each community college. "Id.§6202(2)(mcKinney Supp,2004). New York City Technical College does not appear to be a legally cognizable entity apart from CUNY. See id.§§6202(2)& 6205 (5). Consequently, CUNY is properly

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(McKinney Supp.2004)("The Term 'senior college' shall mean an institution of higher education in the city of New York. . .including. . . New York City college of technology (formerly known as 'New York city technical college')...."); Hester-Bay v. New York City Technical Coll, No.CV-98-5129 (CPS), 2000 U.S.Dist,LEXIS 5323,*(E.D.N.Y. March 24,2000).("Technical College is by statute a senior college of CUNY."). We are thus left with a question heretofore unanswered in this circuit: Is a CUNY senior college an "arm of the state" and therefore immune from suit? For the reasons that follow, we find that it is.

We review de novo a district court's dismissal on grounds of sovereign immunity. CSX Transp., Inc.v.N.Y.State Office of Real Prop.Servs.,306 F.3d 87, 94(2d Cir.2002). It is well settled that the ultimate guarantee" of the Eleventh Amendment is that "nonconsenting States may not be sued by private individuals in federal court." Bd. of Trustees v. Garrett, 531 U.S. 356,363(2001).3 And

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named defendant in this action. What is more, that we view New York City College of Technology, rather than CUNY's central administration, as the relevant institution is of no moment: The central administration is also a "senior college." Id.§6202(5)

3The two exceptions to this rule-congressional abrogation and state waiver-are not applicable here. Plaintiffs argue that CUNY "waived immunity by not answering and not making a motion." But

(Continued on the following page.)

the Eleventh Amendment extends immunity "not only to a state, but also to entities considered 'arms of the state.'" McGinty v. New York, 251 F.3d 84,95(2d Cir.2001). CUNY argues that it qualifies as an "arm of the state."

CUNY made the same argument before this Court four years ago, in a case involving a CUNY community college. See Pikulin v. CUNY, 176 F.3d 598,600(2d Cir. 1999)(per curiam) 4 In Pikulin, after

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CUNY did make a "suggestion" to the court, in the form of a letter, that jurisdiction over CUNY did not lie because of sovereign immunity. See Fed.R.Civ.P.12(b)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.") And although, as a general matter,we disapprove of district courts signing dismissal orders without giving plaintiffs an express opportunity to respond, in the instant case, we see no reason to remand this question, which we can readily decide on the submission and the law before us. See McGinty v. New York,251 F.3d84,90(2dCir.2001)(Since [the] issues are predominantly of a legal nature, we believe we are adequately informed to decide them.")

4 Pikulin "involved a contract between plaintiffs and the board of trustees of Kingsborough Community College, a CUNY community college, to install heating, ventilation, and air conditioning equipment." Hester-Bey, at 2000 U.S. Dist.LEXIS 5323, at *5.

reviewing the district court's conclusion that sovereign immunity attached, we sent the case back for reconsideration due to inadequate findings.5 Without deciding the ultimate question of CUNY's immunity. Pikulin set forth two facts that should guide the determination of whether an institution is an arm of the state: (1)"the extent to which the state would be responsible for satisfying any judgment that might be entered against the defendant entity," and (2)"the degree of supervision exercised by the state over the defendant entity." Pikulin, 176 F.3d at 600. The first of these is the "most salient factor in Eleventh Amendment determinations." Hess v. Port Auth. Trans-Hudson Corp.,513 U.S.30,48 (1994).

We find that CUNY senior colleges meet the two criteria outlined in Pikulin. First, the state is responsible for paying money judgments entered against CUNY senior colleges. See N.Y. Educ. Law §6224(6)(McKinney 2001)("[T]he comptroller of the state of New York is authorized to. . .pay from funding sources

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5 Specifically, we criticized the lower court's reliance on the state's statutory obligation to indemnify trustees, officers, and staff of CUNY against liability, "because, we reasoned, "this provision of state law requires the state to indemnify only such individuals affiliated with CUNY, and does not address the state's financial responsibility, if any, to satisfy judgments entered against CUNY itself." Pikulin, 176 F.3d at 600(citing N.y.Educ.Law§6205(1)

available for payment of claims by the state any settlement, order or judgment in any federal or state court, other than the court of claims, or any administrative tribunal which pertains to a senior college of the city university of New York.") (emphasis added); 6 see also id. §6224(5)(providing for state's payment of judgments entered against CUNY in state court of claims; Perry v. City of New York, 126A.D.2d714,511N.Y.S.2d310(2d Dept.1987)(holding that the state is responsible for paying money judgments against a senior CUNY college). The state also reimburses CUNY senior colleges for their net operating expenses. See N.Y. Educ.Law §6221(A)(4)(McKinney Supp.2004).

Second, "ultimate control over how CUNY is governed and operated" rests with the state. Becker v. City Univ. of New York, 94 F.Supp.2d 487,490(S.D.N.Y.2000). Among other things, the governor, with the advice and consent of the state senate appoints ten of the seventeen members of CUNY's board of trustees, including the chair and vice chair. See N.Y.Educ.Law §6204(2)(a) & (d)(McKinney 2001). And the chancellor is required by law to

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6 By contrast, claims against CUNY community colleges, such as the one at issue in Pikulin, are governed by Sections 50-e & 50-i of New York's General Municipal Law. See N.Y. Educ. Law §6224(1)(McKinney 2001). While these sections suggest that the City of New York is responsible for paying any judgment rendered against CUNY's community colleges, we need not determine that issue here.

submit an annual proposed budget, already approved by the board of trustees, to the governor, who in turn presents his budget recommendations for the senior colleges to the state legislature. Id.§6230 &(3).[7]

CUNY senior colleges certainly do have a degree of independence, but they are "ultimately accountable to, and dependent upon, the state." Becker,94 F. Supp. 2d at 490.[8] Therefore, we agree with all of the district courts in our circuit that have considered the issue that a CUNY senior college, here New York City College of Technology, is an "arm of the state." Plaintiffs' suit against CUNY are equivalent to suits against the State of New York and are therefore barred by the Eleventh Amendment.

We have considered all plaintiffs' challenges to the dismissal of CUNY for lack of jurisdiction on the grounds of sovereign immunity and find them to be meritless. Accordingly, we AFFIRM the judgment of the district court as it pertains to CUNY.

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7 Moreover, the real property of the CUNY senior colleges is owned by the state, see id. § 6219(1)(a), and CUNY may aquire property for use by senior colleges using the state's eminent domain power, see id § 6213(2).

8 Section 6201 states, in relevant part, that "[t]he legislature intends that the city university of New York should be maintained as an independent system of higher education. "Id. § 6201 (2). And Section 6201(1) preserves a

(Continued on the following page.)

role for the city. "The governance of the university must reflect increased state responsibility but should preserve the city's participation in the governance of the university it created and developed at city expense." But in light of all the other factors supporting state authority and control over CUNY and its senior colleges, a finding of sovereign immunity remains appropriate.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

Before: Hon. Amala L. Kearse,
Hon. Guido Calabresi,
Hon. Robert A. Katzmann,
Circuit Judges

Docket Nos. 03-7531;037532

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs-Appellants,

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND,
Defendants-Appellees.

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES.
Defendants.

Appeal from of the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

On consideration whereof, it is hereby ORDERED, ADJUDGED, and DECREED that the judgment of said district court be and it

hereby is AFFIRMED in accordance with the opinion of this Court.

FOR THE COURT:
Roseanne B. MacKechnie,
Clerk
By

/s/

Arthur M. Heller
Motions Staff Attorney

Filed February 3. 2004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE

Roseann B. Mackechnie
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse Foley Square in the City of New York, on the 14th day of May two thousand four.

ALICE CLISSARUS and PATRICIA CLISSARUS
Plaintiffs-appellants, (sic) 03-7531(L)

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CITY UNIVERSITY OF NEW YORK and PSC-CUNY WELFARE FUND,
Defendants-Appellee,

ALL CASUALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES ALL POTENTIALLY RESPONSIBLE AGENCIES and ALL CASUALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES. (sic)

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Appellants Patricia Clissarus and Alice Clissarus, (sic)

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to

any other judge that heard the appeal and that no such judge has requested that a vote be taken.

For the Court,

Roseann B. MacKechnie, Clerk

By: /s/

Arthur M. Heller
Motions Staff Attorney

(Filed May 14, 2004)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

Before: Hon. Amala L. Kearse,
Hon. Guido Calabresi,
Hon. Robert A. Katzmann,
Circuit Judges

Docket Nos. 03-7531, 03-7532

ALICE CLISSURAS and PATRICIA CLISSURAS
Plaintiffs-Appellants

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND.
Defendants-Appellees

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES.
Defendants

Appeal from of the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

On consideration whereof, it is hereby ORDERED, ADJUDGED, and DECREED that the

judgment of said district court be and it hereby is AFFIRMED in accordance with the opinion of this court.

FOR THE COURT:
Roseanne B. MacKechnie, Clerk

by /s/

Arthur M. Heller
Motions Staff Attorney

A TRUE COPY
Roseanne B. MacKechnie, Clerk

by /s/ Tammy Martinez

Deputy Clerk

ISSUED AS MANDATE: 6/14/04

SDNY/NYNY

02-cv-8130

SCHEINDLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X
:
ALICE CLISSURAS
:
Plaintiff,
:
- against -
:
CITY UNIVERSITY OF NEW YORK,
et al., :
Defendants.
- -X

SHIRA A. SCHEINDLIN, U.S.D.J.:

Pro se plaintiff Alice Clissuras has brought suit against, inter alia, the City of New York ("CUNY"). Because CUNY and the senior college in issue, New York City Technical, are arms of the state, CUNY is entitled to Eleventh Amendment immunity from suit. See Salerno v. City University of New York, No. 99 Civ. 11151, 2000 WL 1277324, at *3 (S.D.N.Y. Sept. 8, 2000); Becker v. City University of New York, 94 F. Supp. 2d 467, 491 (S.D.N.Y. 2000) ("In sum, the State of New York is responsible for paying judgments entered against CUNY senior colleges. The state has ultimate authority over how CUNY senior colleges are operated and governed. Accordingly, (plaintiff's) suit against CUNY's central administration is equivalent to a suit against the State of New York, and is thus barred by the Eleventh Amendment.")

Accordingly, defendant CUNY is dismissed from this lawsuit. The caption should be modified to reflect this dismissal.

SO ORDERED

/s/

SHIRA A. SCHEINDLIN
U.S.D.J.

Dated: New York, New York
October 31, 2002

- Appearances -

Plaintiff (Pro Se):

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For Defendants:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

ALICE CLISSURAS and PATRICIA CLISSURAS,

Plainttiffs

- against -

TEACHERS" RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants.

- -X

SHIRA A. SCHEINDLIN, U.S.D.J.:

OPINION AND ORDER

02 Civ. 8130 (SAS)
02 Civ. 8138 (SAS)

I. INTRODUCTION

Alice Clissuras and Patricia Clissuras, 1 proceeding pro se, commenced this action on October 11, 2002 against the City University of New York ("CUNY"),

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1 Alice and Patricia Clissuras filed virtually identical Complaints and responses to the instant motion. The defendants filed separate motions with respect to each complaint. When necessary to indicate factual differences or to identify which plaintiff is referenced in the defendants, an "A." or "P." precedes the abbreviated document name. For example, the memorandum subtitled by the Professional Staff Congress relating to Patricia Clissuras is identified as "P." Union Mem."

2 the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress /City University of New York ("PSC-CUNY" or "the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Plaintiffs allege various constitutional violations

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2Defendant CUNY moved to dismiss the Complaints against it for lack of subject matter jurisdiction pursuant to Rule 12(h)(3). See 10/24/02 Letter to the Court from Stephen M. Jacoby, Assistant Attorney General, at 1. By Orders dated October 31, 2002, the Court dismissed the Complaints against CUNY. See 10/31/02 Order, No. 02 Civ. 8130 (SAS); 10/31/02 Order, No. 02 Civ. 8138 (SAS). The caption has been modified to reflect the dismissal.

Despite the dismissal of CUNY from these lawsuits, plaintiffs continue to argue that CUNY does not have immunity from suit under the Eleventh Amendment. See Memorandum of Law in Support of Plaintiff's Motion for Failure of Defendants' Answers and Defenses ("A. Mem." and "P. Mem.") at 9; see also Plaintiff's Rebuttal Reply to Defendants CUNY, Retirement System, Union, and Welfare Fund, for Continuing Failure to Respond to the Issues and Failure to Defend ("A. Sur-reply") (referring repeatedly to CUNY as a defendant). This argument is unavailing -- CUNY is no longer a party in this action because, as an arm of the state, CUNY (and the senior college in issue, New York City Technical College is entitled to Eleventh Amendment immunity from suit.

pursuant to section 1983 of Title 42 of the United States Code, as well as claims for breach of contract, fraudulent taking and obstruction of justice. The remaining defendants now move for dismissal pursuant to Rule 12(b)(6) 3 on the following grounds: (1) defendants are not state actors and therefore cannot be held liable under section 1983; (2) plaintiffs' claims are time barred; plaintiffs failed to state a claim for fraud, breach of contract, and breach of fiduciary duty; (4) no private right of action exists for obstruction of justice; (5) no private right of action exists for "identity theft;" and (6) the doctrines of collateral estoppel and res judicata bar plaintiffs' Claims. For the reasons stated below, defendants' motions are granted.

II. LEGAL STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) should be granted only if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claims which would entitle [her] to relief.'" Weixel v. Board of Educ. of the City of New York, 287 F. 3d 138, 145 (2d Cir. 2002) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "'is merely to assess the legal feasibility of the complaint,

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3 The Fund also moved to dismiss plaintiffs' claim under Rule 12(b)(1). Because I am granting the motion to dismiss pursuant to Rule 12(b)(6). I need not address the jurisdictional issues raised by the Fund.

not to assay the weight of the evidence which might be offered in support thereof,'" Sims v. Artuz, 230 F. 3d 14, 20 (2d Cir. 2000) (quoting Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984).

Courts must accept all factual allegations in the complaint as true and draw all reasonable inferences in plaintiff's favor when deciding a motion to dismiss pursuant to Rule 12(b)(6). See Chambers v. Time Warner, Inc. 282 F.3d 147,152 (2d Cir. 2002). Because "most pro se plaintiffs lack familiarity with the formalities of pleading requirements, [courts] must construe pro se conplaints liberally, applying a more flexible standard to evaluate their sufficiency." Lerman v. Bd. of Elections in the City of New York, 232 F.3d 135, 140 (2d Cir.2000). It is particularly important to read a pro se complaint liberallly where it alleges civil rights violations. See Thompson v. Carter, 284 F.3d 411, 416 (2d Cir. 2001).

III. BACKGROUND

Both Alice and Patricia Clissuras worked as professors for New York City Technical College ("NYCTC"), a division of the City University of New York. Complaint of Alice Clissuras ("A. Compl.") ¶ 7; Complaint of Patricia Clissuras ("P. Compl.") ¶ 7. Alice Clissuras began teaching at NYCTC on September 1, 1948, A. Compl. ¶ 32, and she retired at the rank of Professor Emeritus with 34 years of service on September 1, 1982. A. Compl. ¶ 7. On February 1, 1969, Patricia Clissuras began teaching at NYCTC. P. Compl. ¶ 20. She retired at the rank of Professor Emeritus on January 30, 1986. P. Compl. ¶ 20. Patricia Clissuras

accumulated twenty-three years of service by teaching at NYCTC for seventeen years, purchasing three years of service credit, and acquiring three additional years of service credit by selecting early retirement. P. Compl. ¶ 20.

Plaintiffs describe a scheme in which the defendants failed to credit them with all their years of service, thereby affecting their pension calculations and reducing their pension payments. Specifically, Alice Clissuras claims defendants TRS and the Union treated her first five years of service as "outside service" and excluded them from the pension calculation. A. Compl. ¶ 21. By eliminating five years of outside service, TRS determined that Alice Clissuras failed to qualify for the 30-year service allowance and calculated her pension benefits based on twenty-nine years of service. A. Compl. ¶¶ 20-21. Alice Clissuras claims she lost more than $10,000.00 annually for twenty years, resulting in over $200,000.00 in damages. A.Compl. ¶ 24. Patricia Clissuras claimed defendant TRS failed to credit her for a complete year of service in 1969, and failed to include six years of service credit obtained through purchase and early retirement. P. Compl. ¶ 21. She alleges damages of over $192,000.00. P. Compl. ¶ 26. Plaintiffs claim the Union similarly used these incorrect calculations to their detriment. A.Compl. ¶¶ 30-33; P. Compl. ¶¶ 32-34.

Both plaintiffs accuse defendants TRS, Welfare Fund and the Union of improperly considering them to be New York City public school teachers, rather than professors for the State of New York,

when calculating benefits. A. Compl. ¶¶ 30, 33, 44-47; P. Compl. ¶¶ 34, 48051. In addition, plaintiffs allege the defendants breached a contract and the Fund breached its fiduciary duty under ERISA by failing to treat them as state retirees and providing reduced health insurance coverage. A. Compl. ¶¶ 41-50; P. Compl. ¶¶ 45-53. Plaintiffs further claim defendants' categorization of them as city retirees constitutes obstruction of justice and "identity theft." A. Compl. ¶¶ 58-61; P. Compl. ¶¶ 63-66.

As noted, the remaining defendants now move to dismiss these actions. Defendant PSC-CUNY has also requested monetary sanctions against the plaintiffs. See Memorandum of Law on Behalf of PSC CUNY in Further Support of Its Motion to Dismiss and Request for Sanctions Against Plaintiff ("Union Rep.") at 8-10.

IV. DISUSSION

A. Federal Claims

1. Section 1983 Claims

Plaintiffs essentially claim that defendants violated their civil rights and denied them due process and equal protection under the law by taking their property (via the pension plan and health benefits) and their identities. Plaintiffs further allege that defendants conspired to perpetrate these violations, thereby obstructing justice. These claims fall within the ambit of section 1983. [4]

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[4] Defendant TRS characterized plaintiffs'

(Continued on the following page.)

a. State Action

Section 1983 establishes liability for the deprivation of constitutional rights by anyone acting "under color of any statute, ordinance, regulations, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983 (2000). "[T]he under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999) (quoting Blum v. Yaretsky, 991, 1002 (1982). The Union And Fund argue that plaintiffs' constitutional claims are barred because their complaints fail to demonstrate that they are state actors or acted under color of state law.

State action is properly determined by considering whether "the alleged infringement of federal rights [is] fairly attributable to the St[illegible]" Rendell-Baker v. Kohn, 457 U.[illegible]0, 838 (1982) (quotation marks and citation omitted). Courts require the defendant to " 'have exercised power possessed by virtue of state law and

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claims that the defendants conspired to reduced their benefits as a claim brought pursuant to section 1985(3) of Title 42 of the United States Code. See Defendant TRS' Memorandum of Law ("TRS Mem.") at 4. Even if plaintiffs' conspiracy claim falls within section 1985(3). plaintiffs must first establish that defendants are state actors. Thus, for the reasons discussed below, any claim under section 1985(3) must also be dismissed.

made possible only because the wrongdoer is clothed with the authority of state law' " to support a state action finding. Kia P. v. McIntyre, 235 F. 3d 749, 755 (2d Cir. 2000) (quoting West v. Atkins, 487 U.S. 42, 49 (1988). Even receiving "information and assistance from federal authorities does not render the recipient's subsequent, independently rendered decision using such information 'fairly attributable' to the government." United States v. International Bhd. of Teamsters, 156 F.3d. 354, 360 (2d Cir. 1988) (emphasis in original.

Plaintiffs contend that the Union and Fund acted under color of state law because they bear the name of CUNY and "serve only CUNY, a State entity, and the CUNY teaching staff." A Mem. at 6-7; P. Mem. at 6-7. 5 Using "CUNY" in their official titles hardly establishes nexus to attribute the alleged unlawful conduct to the state; plaintiffs must instead allege that "defendants' actions took place under the direction or control of a state entity." Andujar." v. Hewitt, No. 02 Civ. 2223, 2002 WL 1792065, at *10 (S.D.N.Y. Aug. 2, 2002). Plaintiffs fail to assert that CUNY controlled the decisions of the Union and the Fund, precluding a finding of state action.

Plaintiffs next declare that the

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5 Plaintiffs filed a "Motion for Failure of Defendants' Answers and Defenses" in response to the Defendants' Motion to Dismiss. No such motion is found in the Federal Rules of Civil Procedure.

Union acted under color of state law by signing a collective bargaining agreement ("CBA") with CUNY and using a CUNY form and method of calculation to determine pension benefits. See affirmation [of Alice Clissuras] in support of Plaintiff's Motion for Dismissal for Failure of Defendants' Answers and Defenses ("A. Aff.") at 6; P. Aff. at 6. The Union's CBA with the State cannot alone establish state action. See Dunn v. County of Erie, no. 92 Civ. 511, 1993 WL 427455, at *3 (W.D.N.Y. Oct. 14, 1993). As correctly noted the Union, labor unions generally are not considered state actors. See Ciambriello v. County of Nassau, 292 F. 3d 307, 323 (2d Cir. 2002). Plaintiffs failed to allege any control or direction over the Union by the state sufficient to support a finding of state action.

Additionally, plaintiffs proclaim the Fund a state actor because it "administers government money for health benefits under the aegis of State government." A. Mem. at 7; P. Mem. at 7. Receipt of public funds or information from state authorities will not convert a private actor into a state actor. See International Bhd. of Teamsters, 156 F. 3d at 360; accord Andujar, 2002 WL 1792065, at *9 ("Neither government funding nor regulation, however extensive, is sufficient to confer section 1983 liability on private actors."). However, performing a function " 'traditionally [within] the exclusive prerogative of the State'" constitutes state action. Rendell-Baker, 457 U.S. at 842 (quoting Jackson v. Metro. Edison Co., 419 U.S. 345 (1974). Private companies frequently administer health benefits and insurance plans.

Providing health insurance (even if funded by the government) does not transform the Fund into a state actor.

b. Statute of Limitations

Defendant TRS argues that plaintiffs' constitutional claims against it are time-barred. Actions pursuant to section 1983 are governed by the personal injury statute of limitations in the state where the action is brought. See Owens v. Okure, 488 U.S. 235, 240-41 (1989). In New York, the personal injury statute of limitations is three years. See N.Y. C.P.L.R. § 214(5) (McKinney 2002). Section 1983 claims accrue when the claimant " 'knows or has reason to know of the allegedly impermissable conduct and the resulting harm.' " Pena v. Travis, No. 01 Civ. 8534, 2002 WL 31886175, at *11 (S.D.N.Y. Dec. 27, 2002) (quoting Duamutef v. Morris, 956 F. Supp. 1112, 1119 (S.D. N.Y. 1997).

Plaintiffs filed their Complaints on October 11, 2002. Accordingly, any claim accruing before October 10, 1999 is time-barred. Alice Clissuras received her first retirement check from TRS on January 2, 1983, see Defendant TRS' Memorandum of Law (A. "TRS Mem.") at 5, and Patricia Clissuras received her first retirement payment on may 2, 1986. See P. Mem. at 5. Plaintiffs may not have immediately realized that the pension calculations were incorrect. However, Alice Clissuras had reason to know of her alleged injury by August 1985, when she commenced federal and state actions regarding the pension calculation. 6 See A. TRS Mem.

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6 In August 1985, Alice Clissuras filed

(Continued on the following page.)

at 3, 5. By June 1986, when Patricia Clissuras instituted federal and state

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an action in federal court against TRS, CUNY, NYCTC, PSC/CUNY, and other defendants claiming violations of Title VII of the Civil Rights Act (sex, religious discrimination resulting in reduced pension benefits) and various state law claims. Judge Jack Weinstein dismissed plaintiff's federal claim as time-barred, ruled no constitutional violation existed, and declined to exercise supplemental jurisdiction over the state law claims in an unpublished decision. See Clissuras v. City of New York, et al., No. 85 CV 3180 (E.D.N.Y. Dec. 12, 1985), aff'd, 1986 U.S. App. LEXIS 28685 (2d Cir. Mar. 31, 1986) (unpublished decision). Plaintiff's petition for certiorari was denied by the Supreme Court. See Clissuras v. City of New York, et al., cert. denied, 479 U.S. 933 (1986), reh'g denied, 479 U.S. 1047 (1987).

In plaintiff's state court action against TRS, CUNY, PSC/CUNY, and other defendants for an accounting of pension payments and for breach of contract, the Appellate Division of the Supreme Court of New York affirmed the Supreme Court's dismissal based on plaintiff's failure to bring suit before four-month statute of limitations ran. See Clissuras v. City of New York, et al., 517 N.Y. S. 2d 39 (2d Dep't 1987) (Discussing the four-month statute of limitations applicable to public agency defendants under New York C.P.L.R. § 217), appeal dismissed, 70 N.Y. 2d 795 (1987), cert. denied, 484 U.S. 1053 (1988).

lawsuits concerning her benefits, she knew of her injuries. 7 See P. TRS Mem at 5. Accordingly, plaintiffs' claims against TRS accrued well beyond the three-year limitations period and are time-barred.

i. Continuing Violations

Plaintiffs assert that continued receipt of their pension checks

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7 In federal court, Patricia Clissuras filed an action against TRS, CUNY, PSC/CUNY, and other defendants alleging the defendants discriminated against her because of her sex and religion in performing her pension benefits calculations, as well as violations of sections 1981, 1983, 1985(3) and 1986 of Title 42 of the United States Code. See Clissuras v. EEOC, at al., No. 89 CV 5869, 1990 U.S. Dist. LEXIS 8284 (S.D.N.Y. June 29, 1990). Plaintiff's claims were dismissed on the basis of res judicata, Eleventh Amendment immunity, and failure to state a claim. See id.

Patricia Clissuras brought suit in state court claiming her pension was calculated at a lower rate than that of her colleagues due to her sex and religion. Plaintiff appealed the New York State Division of Human Rights' probable cause determination finding no discrimination, which the Appellate Division of the Supreme Court of New York affirmed. See Clissuras v. New York State Division of Human Rts., et al., 536 N.Y.S. 2d 625 (1st Dep't 1988), appeal dismissed, 74 N.Y. 2d 715 (1989).

estabishes a continuing violation, making their claims against TRS timely. See A. Mem. at 9; P. Mem. at 9. The continuing violation doctrine "allows courts to consider conduct that would ordinarily be time barred as long as the untimely incidents represent an ongoing unlawful employment practice." National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 108 (2002). Plaintiffs must allege more than a continuing impact on their benefits to establish a continuing violation -- there must be a present violation. See United States v. Evans, 431 U.S. 533, 558 (1977). The Supreme Court has held "[i]t is not correct to consider payments of benefits based on a retirement that has already occurred as a sort of continuing violation." Florida v. Long, 487 U.S. 223, 239 (1988). 8 Because plaintiffs cannot evade the statute of limitations by alleging a continuing violation, their

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8 The LONG Court distinguished its decision from Bazemore v. Friday, 478 U.S. 385 (1986), which addressed the continuing payment of discriminating wages for work performed by current employees. Long concerned retirees pension benefits "fixed under a contract between the employer and retiree based on a past assessment of an employee's expected years of service, date of retirement, average final salary, and years of projected benefits." Long 487 U.S. at 239. In distinguishing pension plans from employment discrimination cases, the Court emphasized that applying the continuing violation doctrine to pension

(Continued on following page.)

section 1983 claims against TRS are dismissed.

2. ERISA

The Fund contends it qualifies as a "governmental plan" exempt from the purview of the Employee Retirement Income Security Act ("REISA"), see 29 U.S.C. § 1003(b)(1); accordingly plaintiffs' claims concerning employee benefits must instead be asserted as common law breach of fiduciary duty action. A governmental plan is a plan "established or maintained for its employees . . . by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the forgoing." 29 U.S.C. § 1002(32) (2000). The Fund, which provides benefits to the public employees of the City University of New York, qualifies as a governmental plan. See Roy v. Teachers Ins. & Annuity Assoc., 878 F. 2d 47, 48-49 (2d Cir. 1989) (holding voluntary retirement program for State University of New York employees was governmental plan exempt from ERISA); see also Feinstein v. Lewis, 477 F. Supp. 1256, 1262 (S.D.N.Y. 1979) (finding welfare plans established pursuant to a collective bargaining agreement for the benefit of public employees are governmental plans). Because the Fund

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funds would potentially hold employers liable for all prior conduct "that could not reasonably have been considered violative of Title VII at the time retirements occurred and funding provisions were made." Id. at 240.

is a governmental plan, plaintiffs' ERISA claims against it must be dismissed.

B. STATE CLAIMS

A district court may decline to exercise supplemental jurisdiction over state law claims if ["it] has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3) (2000). Because plaintiffs' federal claims have been dismissed, I decline to exercise supplemental jurisdiction over plaintiffs' claims of common law fraud, breach of contract and breach of fiduciary duty. Accordingly, plaintiffs' state law claims are, dismissed without prejudice.

c. Sanction

Defendant PSC-CUNY requests monetary sanctions against plaintiffs for their "vexatious" and "frivolous litigation." Memorandum of Law on Behalf of PSC CUNY in Further Support of its Motion to Dismiss and Request for Sanctions Against Plaintiff [Alice Clissuras]("A.Union Rep.") at 8-10; P. Union Rep. at 8-10. The Union cites Golub v. University of Chicago, Nos. 87 Civ. 2891, 88 Civ. 597, 1992 WL 333641, at *3 (E.D.N.Y. Oct. 26, 1992), to support its request for monetary sanctions against these pro se plaintiffs. However, the court in Golub imposed monetary sanctions only after Golub beleaguered various courts with duplicative motions and actions, ignored the court's instruction "not" to replead any claims dismissed with prejudice," and disobeyed a court order permanently enjoining him from filing or bringing any other actions against the defendants in any court or administrative agency. See id. at *1, *3. The court

went so far as to warn Golub that he "may not re-open this case, now or ever." Id. at *3 (emphasis in original). In justifying monetary sanctions, the court emphasized that Golub had been "adequately warned of the consequences which may result from this behavior." Id.

Alice and Patricia Clissuras have not received the same unambiquous warnings, making monetary sanctions inappropriate at this time. However, such a warning will now issue. Alice Clissuras and Patricia Clissuras are hereby permanently restrained and enjoined from filing, bringing or otherwise instigating any actions, or prosecuting or continuing to prosecute any claims, motions or other filings of any type in any federal court against the City University of New York, the Teachers' Retirement System of the City of New York, Professional Staff Congress/City University of New York, and PSC-CUNY Welfare Fund unless they first seek leave to proceed from this court. In seeking leave, plaintiffs must submit to a magistrate judge a copy of this Court's Opinion and Order and a sworn statement certifying that the claims to be asserted have not been previously adjudicated. Should either plaintiff fail to comply with these conditions, monetary sanctions may be appropriate.

V. CONCLUSION

For the reasons stated above, defendants' motions to dismiss the complaints are granted. The Clerk of the Court is directed to close these cases.

SO ORDERED:

/S/

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
March 27, 2003

-Appearances-

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs,

-against-

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/ CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants

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Doc #24 **02 CIVIL 8130 (SAS)** ← File in
02 CIVIL 8138 (SAS)

The remaining defendants having moved to dismiss pursuant to Fed. R. Civ. P. 12 (b)(6), and the matter having come before the Honorable Shira A. Scheindlin, United States District Judge, and the Court, on March 31,2003, having rendered its Opinion(88259)and Order granting defendants' motions to dismiss the complaints, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (88259) and Order dated March 31, 2003, defendants' motions to dismiss the complaints are granted; accordingly, these cases are closed.

Dated: New York, New York
March 31, 2003

J. MICHAEL McMAHON

BY: **Clerk of Court**
/S/
Deputy Clerk

Filed 3/31/03

Entered on doc/microfilm 4/4/03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs,

-against-

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/ CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants

----------X

Doc #23 **02 CIVIL 8130 (SAS)**
02 CIVIL 8138 (SAS) ← File in

The remaining defendants having moved to dismiss pursuant to Fed. R. Civ. P. 12 (b)(6), and the matter having come before the Honorable Shira A. Scheindlin, United States District Judge, and the Court, on March 31,2003, having rendered its Opinion(88259)and Order granting defendants' motions to dismiss the complaints, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (88259) and Order dated March 31, 2003, defendants' motions to dismiss the complaints are granted; accordingly, these cases are closed.

Dated: New York, New York
March 31, 2003

J. MICHAEL McMAHON

BY: **Clerk of Court**
/S/
Deputy Clerk

Filed 3/31/03

Entered on doc/microfilm 4/4/03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

ALICE CLISSURAS and PATRICIA CLISSURAS :

Plaintiffs, :

-against- :

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al., :

Defendants. :

- -X

SHIRA A. SCHEINDLIN, U.S.D.J.

MEMORANDUM
OPINION AND ORDER

02 Civ. 8130 (SAS)
02 Civ. 8138)SAS)

Plaintiffs have filed untimely motions for reconsideration of this Court's Opinion and Order in Clissuras v. Teachers' Retirement Sys. of New York, Nos. 02 Civ. 8130 and 02 Civ. 8138, 2003 WL 1701992 (S.D.N.Y. Mar. 28, 2003), dismissing their claims against all defendants. For the reasons set forth below, plaintiffs' motions for reconsideration are denied.

I. BACKGROUND

Alice Clissuras and Patricia Clissuras, proceeding pro se, commenced this action on October 11, 2002 against the City University of New York ("CUNY"),1

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1 Defendant CUNY moved to dismiss the Complaints against it for lack of subject matter jurisdiction pursuant to Rule

(Continued on following page.)

the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress/City University of New York ("PSC-CUNY" or "the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Plaintiffs alleged various constitutional violations pursuant to section 1983 of Title 42 of the United States Code, as well as claims for breach of contract, fraudulent taking and obstruction of justice.

Both Alice and Patricia Clissuras worked as professors for New York City Technical College ("NYCTC"), a division of the City University of New York. Plaintiffs described a scheme in which the defendants failed to credit them with all their years of service, thereby affecting their pension calculations and reducing their pension payments. In addition, plaintiffs accused defendants TRS, Welfare Fund and the Union of improperly considering them to be New York City public school teachers, rather than professors for the State of New York, when calculating benefits. Plaintiffs further claimed that defendants' categorization of them as city retirees constitutes obstruction of justice and "identity theft."

II. LEGAL STANDARD

A motion for reconsideration is governed by Local Rule 6.3 and is appropriate where a court overlooks "controlling" decisions or factual

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12(h)(3). By Orders dated October 31, 2003, the Court dismissed the Complaints against CUNY.

matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." Range Road Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 392 (S.D.N.Y. 2000)(internal quotation marks and citation omitted); see also Shrader v. CSX Transp., Inc.,70 F. 3d 255, 257 (2d Cir. 1995)("The standard for granting . . . a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court"). Alternatively, a motion for reconsideration may be granted to "correct" a clear error or prevent manifest injustice." Doe v. New York City Dep't of Soc. Servs., 709 F. 2d 782, 789 (2d Cir. 1983). There is a ten-day time limit for bringing motions for reconsideration. See S.D.N.Y. R. 6.3 (requiring that a motion for reconsideration or reargument be served within ten days after the docketing of the court's determination of the original motion.

Local Rule 6.3 should be "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the court." Dellefave v. Access Temps., Inc., No. 99 Civ. 6098, 2001 WL 286771, at *1 (S.D.N.Y. Mar. 22, 2001); see also In re Houbigant, Inc., 914 F. Supp. 997, 1001 (S.D.N.Y. 1996) (a Local Rule 6.3 motion "is not a motion to reargue those issues already considered when a party does not

like the way the original motion was resolved"); Carolco Pictures, Inc. v. Sirota, 700 F. Supp. 169, 170 (S.D.N.Y. 1988) (purpose of Local Rule 6.3 is to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters").

III. DISCUSSION

Plaintiffs seek to reargue issues that were already carefully considered by this Court in March 2003. These motions are untimely as the Opinion and Order and Judgment dismissing plaintiffs' Complaints were docketed on March 28 and 31, 2003, respectively. Accordingly, plaintiffs motions could be denied on this basis alone. However, considering plaintiffs' pro se status, I will consider the merits of plaintiffs motion despite the late date on which they were filed.

Plaintiffs' motions do not raise any issues of fact or law overlooked by this Court. Nor do plaintiffs argue that reconsideration is necessary here to prevent manifest injustice. To the contrary, justice requires that plaintiffs not be permitted to reargue issues that were fully considered by this Court. Because there is absolutely no basis for plaintiffs' untimely motions, they are hereby denied.

IV. CONCLUSION

For the reasons set forth above, plaintiffs' motions for reconsideration are denied. The Clerk of the Court is

directed to close these motions.

SO ORDERED:

/S/

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
May 15, 2003

-Appearances-

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(3)

Supreme Court, U.S.
FILED
DEC 9 - 2004
OFFICE OF THE CLERK

No. 04-361

IN THE

SUPREME COURT OF THE UNITED STATES

ALICE CLISSURAS and PATRICIA CLISSURAS,

Plaintiffs-Appellants-
Petitioners,

v.

CITY UNIVERSITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF THE
CITY OF NEW YORK,
PROFESSIONAL STAFF CONGRESS/CITY
UNIVERSITY OF NEW YORK,
PSC-CUNY WELFARE FUND;

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
AFORESAID FOUR AGENCIES;
ALL POTENTIALLY RESPONSIBLE AGENCIES; and
ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants-Appellees-
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING OF ORDER DENYING AND FOR DETERMINATION OF APPELLANTS' PETITION FOR WRIT OF CERTIORARI

ALICE CLISSURAS, pro se
Lead Petitioner
PATRICIA CLISSURAS, pro se
Petitioner
215 Adams Street
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REASONS FOR REHEARING, DETERMINING, AND VACATING ORDER DENYING PETITION FOR WRIT OF CERTIORARI

1. The Orders of the Southern District (3) are void due to, inter alia, failure of the Southern District to determine plaintiffs' Motions to Dismiss the Defendants for failure to respond to and defend against plaintiffs' prima facie Complaints and documentary evidence. (Petitioners' App. for Writ, A.24-52)

2. The Orders of the Second Circuit are void and should not be allowed to stand due to, inter alia, failure to determine plaintiffs' appeals and due to failure to address and correct the manifest errors of the Southern district. (App. for Writ, A.1-23)

3. The Order of this Court is void due to, inter alia, absence of determination of Petitioners' Writ of Certiorari

to the Second Circuit and absence of correction of manifest errors of Second Circuit. (A.1, A.2, and A.3, Appendix attached hereto.)

ALL PARTIES AND THEIR ATTORNEYS

ALICE CLISSURAS (AC) pro se
Plaintiff-Appellant, Petitioner
Lead Petitioner: J.D., No license
U.S.C.A., 2d Cir.: 03-7531
U.S.D.A., S.D.N.Y.: 02-cv-8130
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PATRICIA CLISSURAS (PC) pro se
Plaintiff-Appellant, Petitioner
Lead Petitioner: Alice Clissuras, by Power of Attorney
U.S.C.A., 2d Cir.: 03-7532
U.S.D.S., S.D.N.Y.: 02-cv-8130
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Defendant-Appellee, Respondent
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*As of July 8, 2004 Docket

TABLE OF CONTENTS

	Page
REASONS FOR REHEARING, DETERMINING, AND VACATING ORDER DENYING PETITION FOR WRIT OF CERTIORARI	i
ALL PARTIES AND THEIR ATTORNEYS.	iii
TABLE OF CONTENTS.	v
TABLE OF AUTHORITIES	vi
REASONS FOR REHEARING. . . . . (Argument)	3
SUBSTANTIAL GROUNDS WITH SUBSEQUENT AND SUBSTANTIAL EFFECTS.	6

APPENDIX

CLERK'S LETTER, WRIT DENIED November 15, 2004.	A-1
CLERK'S WRIT ORDER, TRUE COPY. .	A-2
EXTRACTED COPY OF DOCKET	A-3
CERTIFICATION OF PETITIONERS: UNNUMBERED, FOLLOWS:	A-4

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. Amends. V, VII, XIV . 2

Const. of N.Y., Art.I-2§
Art.I-11, Art.V-§7. 3

CASES, STATUTES, REGULATIONS:
APPENDIX IN SUPPORT OF
APPELLANTS' PETITION FOR
WRIT OF CERTIORARI

By incorporation: vi, vii

IN THE

SUPREME COURT OF THE UNITED STATES

ALICE CLISSURAS, Docket No. 03-7531, v.
CITY UNIVERSITY OF NEW YORK, et al.

PATRICIA CLISSURAS, Docket No. 03-7532, v.
CITY UNIVERSITY OF NEW YORK, et al.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING OF ORDER DENYING
AND FOR DETERMINATION OF APPELLANTS'
PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE and
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

Alice Clissuras (AC) and Patricia Clissuras (PC), petitioners, pro se, in this proceeding, respectfully petition the Court for rehearing, determining, and vacating of Order entered on November 15, 2004, denying Appellants' Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit. (A.1, A.2, and A.3, attached hereto)

Petitioners make this request for reconsideration, as of right, on the

grounds that defendants, CUNY, Retirement System, Union, and Welfare Fund, have since the inception of plaintiffs' retirements improperly taken over $200,000 from each plaintiff's pension, have improperly taken plaintiff's health care entitlements and reduced them from comprehensive coverage to the lowest tier available, and have taken plaintiffs' state-professor-identity employment records and improperly converted them to city-teacher records. All of plaintiffs' property and entitlements were taken and continue to be taken by the fraudulent conversion of state to city identity, without due process, in violation of Amendments V, VII, and XIV, of the United States Constitution, for failures of equal protection of the laws, deprivation of due process, and right to trial. Similarly, the

the actions of the defendants have been and are in violation of the Constitution of New York, Art.I-§2 [Right to trial by jury]; Art.I-11 [Equal protection of laws.]; and Art.V-§7 [Retirement benefits vested.]:

> "(M)embership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

The defendants' violations of the Constitutions and the Laws have continued nonstop for over 20 years.

REASONS FOR REHEARING, DETERMINING, AND VACATING ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners request rehearing of the Order of the Court denying Petition for Writ for the following reasons:

(1) That plaintiffs' February 7, 2003 Southern District Motions to dismiss the defendants for failure to

answer and defend, remain undetermined, to present;

(2) That plaintiffs' appeals to the Second Circuit remain undetermined, to present;

(3) That the Courts overlooked defendants' Constitutional violations, identity theft, and fraud;

(4) That the violations have continued after the issuance of each and every Court Order, with impunity, and continue, to present; and

(5) That not one of the Orders issued by all of the Courts bears a signature.

As a result of not determining: plaintiffs' Motions to Southern District, appellants' Appeals and Motions to Second Circuit, and Petitioners' Petition for Writ of Certiorari, the Motions, Appeals, and Petition are all <u>open</u> and

must be determined before any dismissals can lawfully be made.

As a result of overlooking defendants' violations of the Constitutions and the Laws, all of the Orders are void, by manifest errors of the Courts; and

As a result of defendants' failure to answer and defend, the defendants are in default and have been since 20 days after the service of the Complaint in October of 2002, without joinder of issue and without the right to continue, in this action, by law.

Thus, the Orders issued, in this case, are unenforceable.

There can be no enforcement, by law, since there is no law which can be used to shield wrongdoers.

By dismissing the Complaints and closing the cases, the Courts allow the

defendants to continue taking plaintiffs' properties and entitlements with impunity and with grounds based solely on unproved affirmative defenses, which remain to be proved at trial, a Constitutional right of which plaintiffs' have been denied.

SUBSTANTIAL GROUNDS WITH SUBSEQUENT AND SUBSTANTIAL EFFECTS

Plaintiffs' instant case is a novel case, in legal process. It was converted from a plaintiffs' case into a defendants' case, from the outset.

By the October 15, 2002 Complaints, plaintiffs present a complete, prima-facie case for each of the three causes: pension, health care, and identity theft or conversion, with referenced evidence and supporting law which allows the fact-trier to rule in plaintiffs' favor on the facts at issue.

The defendants have not answered,

responded to, or argued the prima-facie facts and issues. The affirmative defenses which the defendants use to support dismissal of the Complaint are not related by the defendants to the facts and issues of the Complaint.

The defendants have not responded to the taking of the pensions, health care and identities; and defendants have not argued any dispositive defenses.

The Southern District argued six affirmative defenses on behalf of the defendants and did not reach any findings of fact or law, as to plaintiffs' Motion to Dismiss defendants for failure to respond.

As a result, the Southern District did not determine plaintiffs' Motion, which remains open, to present; and the Court dismissed the Complaints

and closed the cases as against CUNY and the "remaining" defendants, "for the reasons stated above," which presumably is a reference to the six affirmative defenses argued by the District Court.

The failure to determine plaintiffs' Motion to Dismiss resulted in substancial manifest District Court errors. The Complaint is the case, not the defenses. There must be an answer to the complaint, which may be in the form of a pleading or a motion. The defendants did not answer and used series of defenses to conceal the lack of answer. By not answering the prima-facie Complaints, the defendants admitted all and are subject to immediate dismissal for judgment by default.

The District Court errors are sanctionable and at the least should have been corrected by the Second

Circuit. However, the Second Circuit did not determine plaintiffs' Appeal, did not rule on equal protection, due process, and right to trial, and did not rule on the prima-facie Complaints. Instead, the Circuit Court affirmed the judgment of the District Court, with its manifest errors.

Respectfully, this Court did not determine Petitioners' request for Writ of Certiorari, did not correct the errors of the Circuit and District Courts, and did not rule on the prima-facie Complaints, which if not opposed are admitted.

The total omission of response in this case is grounds for Judgment by Default for Plaintiffs and sanctions for the omission of response.

During the two years of the life of this case, the Courts have allowed the

the defendants to take $20,000, plus, from the pension of each plaintiff, to take complete control improperly of plaintiffs' health care, and to take plaintiffs' identities to more venues.

Lest any one think that plaintiffs are repetitious in argument, in order for reargument to be sanctionable, a **decided** matter with specific evidentiary support must be identified. In this case plaintiffs are seeking decisions.

Lest any one think that plaintiffs are causing delays, look to those who have not answered for over 20 years, who have abused plaintiffs for over 20 years; and who have interfered with our lives and continue to do so nonstop.

Plaintiffs respectfully request grant of the petition for writ and request a well deserved and well earned

judgment against defendants by default.

Respectfully submitted,

ALICE CLISSURAS
Lead Petitioner, pro se

PATRICIA CLISSURAS
Petitioner, pro se

215 Adams Street
Brooklyn, NY 11201
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SUPREME COURT of the UNITED STATES

OFFICE of the CLERK

WASHINGTON, DC 20543-0001

William K. Suter
Clerk of the Court
(202)479-3011

November 15, 2004

Ms. Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Re: Alice Clissuras and
Patricia Clissuras
v. City University of
New York, et al. No.04-361

Dear Ms. Clissuras:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/S/

William K. Suter,
Clerk

SUPREME COURT of the UNITED STATES

No. 04-361

Alice Clissuras and Patricia Clissuras
Petitioners

v.

City University of New York, et al.

ON PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Second Circuit, No.03-7531, 03-7532.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for Second Circuit.

IT IS ORDERED by this Court that the said petition is denied.

November 15, 2004

A true copy WILLIAM K. SUTER
Test:
Clerk of the Supreme Court of the United States
By /S/
Deputy

No. 04-361 CFX

Title:	Alice Clissuras and Patricia Clissuras, Petitioners v. City University of New York, et al.
Docketed:	September 14, 2004
Lower Ct:	United States Court of Appeals for the Second Circuit
Case Nos.:	(03-7531,03-7532)
Decision Date:	February 3, 2004
Rehearing Denied:	May 14,2004
Analyst:	Blalock

---Date---	----Proceedings and Orders-----
Aug 12 2004	Petition for a writ of certiorari filed. (Response due October 14, 2004)
Aug 12 2004	Appendix of Alice Clissuras and Patricia Clissuras filed.
Sep 23	Waiver of right of respondent Teachers' Retirement System of the City of New York to respond filed.
Sep 29 2004	Waiver of right of respondent Professional Staff Congress/City University of New York Weflare (sic.)fund to respond filed.
Oct 27 2004	DISTRIBUTED for conference of November 12, 2004 (Page 2)
Nov 15 2004	Petition DENIED.

--Name----------Address-------Phone----

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Party name: Alice Clissuras and
Patricia Clissuras

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Party name:Teachers' Retirement System
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(212)765-2100

Party name:Professional Staff Congress/
City University of New York
Welfare fund

SUPREME COURT OF THE UNITED STATES

No. 04-361

Alice Clissuras and Patricia Clissuras
Petitioners

v.

City University of New York, et al.
Respondents.

CERTIFICATION OF PETITIONERS

Petitioners, Alice Clissuras pro se and Patricia Clissuras pro se, certify that the Petition for Rehearing to which this Certification is bound is restricted to the grounds specified in Supreme Court Rule 44 and that it is presented in good faith without any intent of delay.

Petitioners seek determination of the issues. Any delays that occur can be attributed to those who do not respond.

ALICE CLISSURAS
Petitionr pro se

PATRICIA CLISSURAS
Petitioner pro se